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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,878	10/31/2001	E. Skott Greenhalgh	24463-A USA	7320

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EXAMINER

BARRETT, THOMAS C

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,878

Applicant(s)

GREENHALGH, E. SKOTT

Examiner

Thomas C. Barrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-17 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-17 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 2-9, 11-17 and 31 have been considered but are moot in view of the new ground(s) of rejection.

Please Note: just because the "reinforced attachment region" is claimed as being confined adjacent to an edge does not mean that filaments used for the second filamentary members cannot be used throughout the graft.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-4, 7 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Jayaraman (WO 99/21506). Jayaraman discloses a tubular graft (10) comprising: first filamentary members (23) made of polyester interlaced with secondary filamentary members (35) made of Nitinol (p6, lines 13-25), which is of a higher tensile strength and has a greater denier than the first members.

Claims 8-9, 11-12 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rakos et al. (EP 0 938 878). Rakos et al. discloses a tubular graft comprising: first filamentary members (12) interlaced with second members (14) made of Nitinol placed circumferentially around the graft (p 3, lines 1-4, Figure 2). Nitinol is a

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different color than Dacron, and therefore the second filamentary members are a different color than the first filamentary members. The circumferential second filamentary members of Figure 2 are in a spaced relation to each other and would be adjacent to an end of the graft. Due to the greater strength of the Nitinol, the second members near the edges of the graft reinforce the space between them to act as an attachment region.

Claims 5-6, 16-17 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Liebig et al. (4,047,252). Liebig et al. discloses a tubular graft comprising: first single ply filamentary members interlaced with a second circumferential multi-ply filamentary member of the same denier (col. 3, line 49-col. 4, line 31). The second multi-ply filamentary member reduces porosity (col. 4, lines 62-64), therefore inherently inhibits leaking. Second filamentary members define a space in between that can be used for attachment at the edges of the graft (FIG. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9, 13-15 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drasler et al. (6,287,335 B1) in view of Jayaraman (6,224,625 B1). Drasler et al. discloses a tubular graft (Figs. 14 and 15) comprising first polymeric

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filamentary members (635 and 640) interlaced with circumferential second (660) and longitudinal filamentary members (655) of greater denier however Drasler et al. fails to disclose the graft having a stent circumferentially around the graft and attached at an end. Jayaraman teaches a stent extending circumferentially around a graft, attached at the ends of the graft (Fig. 1), which is capable of a high degree of expansion, yet retains a low profile (col. 1, lines 40-46). It would have been obvious to one of ordinary skill in the art to combine the teaching of a stent extending circumferentially around a graft, as taught by Jayaraman, to a tubular graft as per Drasler et al., for a stent-graft capable of a high degree of expansion, yet retaining a low profile. Please Note: the stent would inherently engage and be supported by the second and longitudinal filamentary members of the Drasler et al. graft as seen in Figs. 13J, 14 and 15 (col. 56, lines 37-64).

Please Note: A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim, i.e. "**for** attachment of said graft".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (703) 308-8295. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

A handwritten signature in black ink, appearing to read 'Thomas Barrett', with a stylized flourish at the end.

Thomas Barrett